

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JENNIFER SAUNDERS,

Plaintiff,

- against -

NYC DEPARTMENT OF EDUCATION, Principal
Resnick, Principal Renal Piton, Assistant Principal
Matt Guttman, Assistant Principal Randi Weingarten,
UFT President Patricia Crispano, UFT Chairperson
Santiago Taveras, Local Instructional Superintendent
Lori Mastramauro, Mentoring Program Coordinator
Eric Lawson, Arbitrator Judy Rivera, Department of
Education, Human Resources Deputy Director Donna
Dennis, Department of Education Human Resources
Assistant Esther Antinez, Department of Education
Human Resources Assistant,

Defendants.

Docket No. 07 CV 2725 (SJF)(LB)

NOTICE OF MOTION

MOTION BY:

GARBARINI & SCHER, P.C.
Attorneys for Defendant *Eric Lawson*

DATE, TIME, and PLACE:

To be set by the court, the United States District
Courthouse, 225 Cadman Plaza East, Brooklyn, New
York 11201

RELIEF REQUESTED:

An Order dismissing plaintiff's Amended Complaint
pursuant to F.R.C.P. 12(b)(6), and for such other and
further relief as to this Court seems just and proper.

SUPPORTING PAPERS:

Affidavit of Gregg D. Weinstock, Memorandum of
Law and Exhibits.

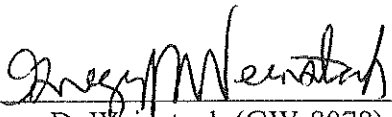
RESPONDING PAPERS:

As per F.R.C.P. and Judge Sandra J. Feuerstein's rules.

Dated: New York, New York
January 8, 2010

Yours, etc.,

GARBARINI & SCHER, P.C.

By: 
Gregg D. Weinstock (GW-8078)
Attorneys for Defendant
Eric Lawson, Esq.
432 Park Avenue South, 9th Floor
New York, New York 10016-8013
(212) 689-1113

TO: JENNIFER SAUNDERS
Pro Se Plaintiff
c/o Bette Adams
117 Maples Avenue
Newark, New Jersey 07112

MICHAEL CARDOZO
CORPORATION COUNSEL
Attorneys for *New York City* Defendants
100 Church Street, Room 2-170
New York, New York 10007
Attn: Daniel Chiu, Esq.

NYSUT
Attorneys for Defendants
Principal Resnick, Principal Renal Piton,
Assistant Principal Matt Guttman, Assistant
Principal Randi Weingarten, UFT President
Patricia Crispano, UFT Chairperson Santiago
Taveras, Local Instructional Superintendent
Lori Mastramauro, Mentoring Program
Coordinator Eric Lawson, Arbitrator Judy
Rivera, Department of Education, Human
Resources Deputy Director Donna Dennis,
Department of Education Human Resources
Assistant Esther Antinez, Department of Education
Human Resources Assistant,
52 Broadway, 9th Floor
New York, New York 10004
Attn: Melinda G. Gordon, Esq.

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AFFIDAVIT

GREGG D. WEINSTOCK, an attorney duly admitted to practice law before the courts of the State of New York and in the United States District Court for the Eastern District of the State of New York, hereby states the following under penalties of perjury:

1. I am a member of the firm of GARBARINI & SCHER, P.C., attorneys for defendant ERIC LAWSON ("LAWSON"), and as such am fully familiar with the facts and circumstances of this case.
2. This Affidavit is submitted in support of this motion for an Order dismissing plaintiff's Amended Complaint pursuant to F.R.C.P. 12(b)(6), and for such other relief as this Court deems just and proper.
3. Plaintiff *pro se*, JENNIFER SAUNDERS, is a former teacher and employee of co-

defendant NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) who has brought this action against the DOE and various individual defendants, alleging violations of 42 U.S.C. § 1983, Title VII of the Civil Rights Act of 1964, Federal Age Discrimination in Employment Act (ADEA), the First and Fourteenth Amendments of the U.S. Constitution, and the New York State and New York City Human Rights Laws.

4. Defendant LAWSON is a hearing officer who, pursuant to the New York State Education Law §§ 3020 and 3020-a, presides over hearings with respect to disciplinary charges filed against tenured teachers. In this case, the DOE charged plaintiff with various specifications of misconduct, including excessive absences and latenesses, incompetence, insubordination, and filing a false police report, while a tenured teacher at the High School of Graphic Communication Arts during the school years 2003-2004 and 2004-2005. Following a Pre-Hearing Conference held on December 19, 2005, a hearing on the merits was conducted during 13 sessions from January 19, through September 20, 2007. Defendant LAWSON issued an award on November 22, 2007 finding plaintiff guilty of two specifications for lateness, one for insubordination, three for rendering unsatisfactory lessons, and one for filing a false report. LAWSON determined that the appropriate penalty was four months’ suspension without pay.
5. As demonstrated by the accompanying Memorandum of Law, thee Amended Complaint should be dismissed as against LAWSON on the following grounds:
 - (a) Arbitrators are afforded absolute immunity from civil actions for acts

arising out of the performance of their duties; therefore, this action against defendant LAWSON must be dismissed;

- (b) Private arbitrators are not state actors, do not act under “color of state law,” and therefore cannot be held liable under 42 U.S.C. § 1983;
- (c) Plaintiff did not exhaust her administrative remedies by failing to timely file an application to vacate the award pursuant to Education Law § 3020-a(5);
- (d) There is a rational basis for the arbitration award pursuant to Education Law § 3020-a(5) and C.P.L.R. § 7511;
- (e) There is no individual liability under Title VII of the Civil Rights Act of 1964 and the Federal Age Discrimination in Employment Act (ADEA); and
- (f) As LAWSON is not plaintiff’s employer nor “aided and abetted” in employment discrimination against plaintiff, he cannot be held liable under the New York State and New York City Human Rights Laws.

6. In support of this motion, defendant submits the following exhibits:

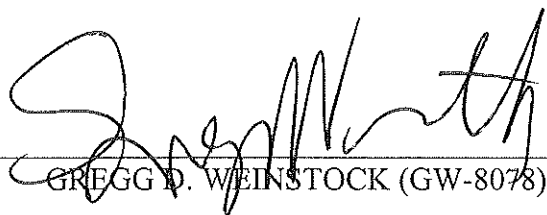
Exhibit 1 Summons and Amended Complaint dated October 8, 2009

Exhibit 2 Arbitrator LAWSON’s Opinion and Decision dated November 22, 2007 in *In the Matter of a Section 3020a Education Law Proceeding Between The New York City Department of Education (Department, Employer) and Tenured Public School Employee Jennifer Saunders (Respondent, Employee)*.

WHEREFORE, it is respectfully requested that this Court dismiss the Amended Complaint

against defendant ERIC LAWSON pursuant to F.R.C.P. 12(b)(6), and grant such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 8, 2010



GREGG D. WEINSTOCK (GW-8078)

MAUREEN GRIFFIN, being duly sworn, deposes and says, that the deponent is not a party of the action and is over 18 years of age.

MAUREEN GRIFFIN

GAIL PORTI
Commissioner of Deeds
City of New York No. 4-4221
Certificate Filed in Queens County
Commission Expires July 1, 2011